



State of Idaho

DEPARTMENT OF WATER RESOURCES

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*Jim*  
*WD 34 File*

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

September 27, 2005

BOB DUKE  
WATERMASTER  
WATER DISTRICT NO 34  
PO BOX 53  
MACKAY ID 83251

BOB SHAFFER  
BIG LOST RIVER IRRIGATION  
DISTRICT  
PO BOX 205  
MACKAY ID 83251

Gentlemen:

This letter responds to your letter to me dated September 22, 2005, and a telephone conversation with both of you on September 26, 2005.

On September 20, 2005, I wrote a letter addressing the question about whether IDWR would grant mitigation credits for managed ground water recharge in the fall of 2005. I stated in my September 20, 2005 letter that IDWR would grant 2006 mitigation credits for managed ground water recharge conducted in the fall of 2005. I also stated that credits would only be recognized if (1) the water diverted and used for recharge was properly accounted for, and (2) a water right authorizes the diversion and use of water for recharge. You asked for clarification of my letter.

In your September 22, 2005 letter, you state that you both feel my letter "does not meet the recharge criteria specified in Recharge Permit #34-7571 and Permit #34-7573 and Plan of Operation Basin 34 Recharge." Permit nos. 34-7571 and 34-7573 authorize diversion and beneficial use of waters of the Big Lost River and tributaries for the recharge. Each permit was conditioned that "approval of this right is subject to the Plan of Operation and other terms and conditions as set forth in the Settlement Agreement and Stipulation dated April 21, 1997." The Plan of Operation for Recharge states that "Recharge efforts utilizing water right nos. 34-7051 and 34-7053 . . . shall be conducted in accordance with this Plan of Operation"

We have reviewed the Recharge Plan of Operation and concluded that the recharge plan describes flow conditions and other details about when permit nos. 34-7571 and 34-7573 can be exercised. The limitations on recharge described in the plan apply only to permit nos. 34-7571 and 34-7573 and do not apply to recharge conducted under other natural flow or storage water rights.

You suggest in the letter that water users may attempt to deliver, for recharge, natural flow water impounded in Mackay Reservoir as rotation credit. Prior to delivery of rotation credit for recharge, the owner of the rotation credit must file an application for transfer with IDWR.

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The Snake River Basin Adjudication, with some limitations, preserved the traditional, local practice of rotating natural flow water rights in the Big Lost River Basin into Mackay Reservoir. One of the limitations, was that the rotated water be used solely on the lands to which the natural flow water right rotated into credit is appurtenant. Another limitation is that the rotated credit cannot be carried forward to the next year. Allowing 2006 mitigation credit for fall of 2005 recharge would violate both of these concepts. I am not inclined to approve any change in nature of use to allow delivery of irrigation water rotated into Mackay Reservoir during the 2005 irrigation season of water for recharge in the fall of 2005.

It is possible that there are natural flow water rights that could be delivered for recharge in 2005. In order to change the nature of use, however, the water right holder must show that the right, or portion thereof, was not exercised for irrigation during the 2005 irrigation season.

Water stored in Mackay Reservoir under the water rights held by the Big Lost River Irrigation District could be delivered for recharge if the irrigation district consents to delivery of the storage water for recharge, and IDWR approves a change in nature of use for the storage water rights.

If flow conditions in the Big Lost River Basin satisfy the Recharge Plan of Operation, natural flow may be delivered for recharge under permit nos. 34-7571 and 34-7573.

I hope this letter adequately addresses your concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Spackman", with a stylized, flowing script.

Gary Spackman

c. Loy Pehrson  
Tim Luke  
Harvey Walker  
Eastern Region